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PATENTREMARKS

Claims 19, 21, and 23 have been amended and claim 25 has been added. Claims 2-13, 15, 17-19, 21, 23, and 25 will be pending following entry of the amendment.

The following remarks are responsive to the Office action dated January 10, 2005.

Response to Rejection of Claims Under 35 U.S.C. §103Claim 19

Claim 19 as amended herein is directed to a package comprising:

a plural number of individually wrapped absorbent feminine care articles; and

reclosable packaging comprising:

a middle portion and a back portion together at least in part forming a flexible pocket having a hollow interior receiving said plural number of absorbent feminine care articles, the hollow interior of the pocket having a volume which is substantially filled by the plural number of individually wrapped feminine care articles so that the pocket conforms to the articles, said pocket being of single-piece construction;

an opening extending into the hollow interior of the pocket, said opening being sized and shaped for permitting at least one of said plural number of individually wrapped feminine care articles to be withdrawn from said hollow interior of the pocket;

a flap attached to the pocket and adapted for covering the opening to retain said plural number of individually wrapped feminine care articles in the hollow interior of the pocket, said flap being selectably moveable between an open position in

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which the opening is generally unobstructed by said flap to permit said article to be withdrawn through the opening and a closed position in which the flap covers the opening and at least a portion of an exterior area of the middle portion of the pocket to retain said plural number of articles in the pocket and to prevent said plural number of articles from passing through the opening; and

a reclosable adhesive closure comprising an adhesive material positioned on said flap for releasably securing the flap in its closed position on said exterior area of the middle portion of the pocket, the adhesive closure being spaced from a distal edge of the flap to permit a portion of the flap to be grasped and separated from the pocket without releasing the closure, said flap being releasably securable by said adhesive closure substantially anywhere on said exterior area of said middle portion of the pocket.

Amended claim 19 is submitted to be nonobvious and patentable over the references of record, and in particular U.S. Patent No. 6,015,045 (Joseph et al.) in combination with U.S. Patent No. 4,979,613 (McLaughlin et al.) and Canadian publication No. 2,109,782 (Larose et al.), in that each of the cited references, whether considered alone or in any combination, fail to teach or suggest a package having a pocket of single-piece construction and a flap releasably securable substantially anywhere on the exterior area of the middle portion of the pocket as recited in amended claim 19.

Joseph et al. disclose a hygienic package (10) intended to protect hygienic articles stored in the package from external contamination. Column 1, lines 42-44. In particular, at column 1, lines 34-50 Joseph et al. describe the drawbacks associated with packages in which a flap merely overlays the

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opening of the package. According to Joseph et al., such an arrangement, while preventing articles from inadvertently falling out of the package, does not adequately prevent dust from entering the interior of the package, even when the flap is in a closed position.

To solve the described shortcomings, the hygienic package (10) of Joseph et al. has a reclosable flap (32) formed by cutting out a portion of a wall (12) of the package to define an opening (40) for accessing the contents of the package. As a result, every time that the flap is closed it is intended to be in flush alignment with the rest of the package (i.e., no overlaying arrangement) to prevent dust from entering the package. As shown in Fig. 1 of Joseph et al., a separately formed retaining band (44) is adhered to the inner surface of the package and extends up above the opening (40). The retaining band (44) has adhesive (50) applied thereto, but in another (yet non-preferred) configuration the adhesive may be applied to the reclosable flap (32).

In use, when the flap (32) is moved to a closed position, it overlays the retaining band (44) in flush alignment with the dispensing package and is secured in the closed position by the adhesive (50). Joseph et al. teach that the flap must be secured to the pocket at the same location (e.g., at retaining band 44) each and every time that the flap is closed and not to any other portion of the wall. Otherwise, the flap would overlay an exterior portion of the package, which Joseph et al. expressly teach against.

Joseph et al. clearly fail to disclose or otherwise even suggest a package having a flap and a pocket of single-piece construction as recited in amended claim 19. The Office action first takes the position that the term "unitary" is broad

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enough to encompass the two-piece construction of the package of Joseph et al. While applicant disagrees with such a characterization, claim 19 is amended herein to clarify that the pocket recited in claim 19 is of a single-piece construction.

The Office action further takes the position that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. Citing *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893) and *In re Heinrich*, 122 USPQ 388, 390 (CCPA 1959). Applicant notes that "reliance on per se rules of obviousness is legally incorrect and must cease." *In re Ochiai*, 37 USPQ2d 1127, 1133 (Fed. Cir. 1995). Moreover, the cases cited in the Office action do not support the Office's position in this instance.

In *Heinrich* the applicant asserted that a one-piece sealing ring was patentably distinguishable over a two-piece sealing found in the prior art. However, whether the sealing ring was formed of one piece or two, the function of the sealing ring was still the same, to provide a seal. Accordingly, the fact that the sealing ring of the prior art was made in two parts did not lessen the pertinence of the two piece sealing ring as prior art. Moreover, the claim at issue in *Heinrich* did not limit the claim to a one-piece sealing ring.

The patent holder in *Howard* unsuccessfully asserted that a stove grate cast as one piece was patentably distinguishable over a two-piece stove grate in which the pieces were formed separately and put together. Similar to *Heinrich*, the function of the grate was the same whether it was cast as a single piece or of two-piece construction. Accordingly, the Supreme Court

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found it obvious to cast in one-piece what was formerly put together from two pieces.

Common to Heinrich and Howard is that the one-piece component served no different function than the prior art two-piece component. In stark contrast, the two-piece arrangement disclosed by Joseph et al. has a specific function that is entirely lost if the package is instead of a single-piece construction as recited in amended claim 19 of the present application. That is, the retaining band of Joseph et al. must necessarily be formed separate from the package and adhered to the inner surface to permit the flap to both adhere to the retaining band and still seat flush with the package in the closed position of the flap. Such an arrangement is required by Joseph et al. to inhibit dust from entering the package when it is closed. Making the package of Joseph et al. from a single-piece as recited in amended claim 19 of the present application would eliminate the flap against seating flush with the rest of the package (i.e., it would overlap the package) when the flap is closed, an arrangement that Joseph et al. expressly teach away from as discussed previously.

Applicants therefore submit that one skilled in the art would not have been motivated by Joseph et al. to eliminate the retaining band of Joseph et al. and instead make the package from a single piece as recited in amended claim 19.

Larose et al. also fail to disclose or suggest a package having a pocket of single-piece construction, and the Office does not assert to the contrary.

McLaughlin et al, which is incorporated by reference into Joseph et al., disclose a generally square-shaped facial tissue package (12) having a separable fastening device (10) for closing the package. The package (12) has an opening (20) for

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dispensing tissues (22), a top (24), a bottom (26), sides (28), and a closure flap (30). The separable fastening device (10) comprises a first fastening element (14) attached to the top (24) of the package (12), and a second fastening element (16) attached an inside surface (32) of the flap (30). With the flap (30) in the closed position, as shown in Fig. 3, the first fastening element (14) is in face-to-face relationship with the second fastening element (16) to form a releasable bond between the surfaces of the two fastening elements at (48).

The Office's position with respect to McLaughlin et al. is that the tissue containing portion of the package (12) is of single-piece construction, and because Joseph et al. incorporates McLaughlin et al. by reference it would have been obvious to construct the package of Joseph et al. from a single-piece (i.e., without the retaining band). Applicant respectfully disagrees. Joseph et al. refers to McLaughlin et al. (as well as U.S. Patent no. 5,184,725) for the purpose of illustrating other configurations, (i.e., shapes such as hexagonal or square) that the package of Joseph et al. may have. McLaughlin et al. otherwise disclose a package in which the flap overlaps the package and neither adheres to a retaining band nor seats in flush alignment with the rest of the package.

There is no suggestion by Joseph et al. that the single-piece construction of McLaughlin et al. with an overlapping flap is suitable for use with the package of Joseph et al. Indeed, McLaughlin et al. disclose no more than the configuration that Joseph et al. expressly teach away from at column 34-50 as discussed previously.

Joseph et al. therefore cannot be modified to incorporate the entire package configuration of McLaughlin et al. without

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doing express violence to the teachings of Joseph et al. Accordingly, one skilled in the art would not be motivated by McLaughlin et al. to construct the package of Joseph et al. of a single-piece because doing so would negate the ability of the flap to seat in flush alignment with the rest of the package when the flap is closed.

For the above reasons, claim 19 as amended herein is submitted to be non-obvious and patentable over Joseph et al. in combination with McLaughlin et al. and Larose et al.

Amended claim 19 is also submitted to be non-obvious and patentable over Jones (3,557,853) in view of Larose et al., Joseph et al. and Tundermann (3,735,918).

Jones discloses a cloth container (10), such as constructed of cloth or silt (see column 2, lines 60-61), for holding sanitary napkins (21) and having a closure flap (22) to permit access to the interior of the container. Hook and loop type fastener strips (24, 25) are secured to the closure flap (22) and the front panel (12) of the container (10), respectively. The hook and loop type fasteners are used to hold the flap in the closed position by substantially aligning and mating the hook strip (24) with the loop strip (25).

Jones fails to disclose or otherwise teach a package in which an adhesive closure is used to releasably secure the flap to the front panel. More particularly, with respect to amended claim 19, Jones fails to show or suggest an adhesive closure on the flap. More notable is that the hook and loop fastener arrangement disclosed by Jones requires that the flap be secured to the front panel in the same location (e.g., where the hook fastener engages the loop fastener) each and every time the flap is closed. Otherwise, the hook fastener would not engage the loop fastener. Thus, Jones clearly fails to

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show or even suggest the flap being releasably securable anywhere on the exterior area of the middle portion of the package as recited in amended claim 19.

Tundermann, as illustrated in Fig. 1 thereof, discloses a film bag (20) having a front panel (22) and a rear panel (24). The rear panel (24) has an integrally attached flap (26) for being folded over to engage the front panel (22) to close the bag. Bands (34, 36, 38, 40, 42, 44, 46) of a "cohesive material" are printed at 45° angles on an upper portion of the front panel (22) and the flap (26). As described in column 2, lines 38-44, the flap (26) can be folded over such that the cohesive bands (34, 36, 38, 40, 42, 44, 46) on the flap will intersect the cohesive bands on the front panel (22) to form contact points (50, 54). The other embodiments, as illustrated in Figs. 6-10, also disclose sealing the flap to the front panel at contact points (86, 88, 94).

The cohesive material used by Tundermann is a particular material that only sticks to itself, thereby negating any concerns of the material sticking to other portions of the bag. See column 1, lines 5-11. Thus, Tundermann requires that the flap (22) engage the front panel (26) only at the contact points (50, 54, 86, 88, 94). Indeed, the flap is incapable of adhering anywhere else on the front panel. Accordingly, Tundermann also fails to show or suggest a flap being releasably securable anywhere on the exterior area of the middle portion of the package as recited in amended claim 19.

Larose et al. and Joseph et al. also fail to disclose or suggest a flap that is releasably securable anywhere on the exterior area of the middle portion of the package. In particular, Larose et al. and McLaughlin et al. each clearly disclose hook and loop fasteners that must be fastened together

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at the same location each time the flap is closed. Joseph et al. disclose a package configuration in which the flap must seal in substantially the same location each time the flap is closed, otherwise the flap will not be in flush alignment with the rest of the package as taught by Joseph et al.

Because Jones, Tundermann, Joseph et al., and Larose et al. each fail to disclose a package having a flap that is releasably securable anywhere on the exterior area of the middle portion of the package, a combination of the references similarly fails to show or suggest such a feature.

Moreover, there is no disclosure provided by any of the cited references that would motivate one skilled in the art to replace the hook and loop fasteners of Jones with adhesive located on the flap as recited in claim 19. Assuming for the sake of argument that Joseph discloses the interchangeability of adhesive for hook and loop fasteners, as is asserted in the Office action, where is the motivation to replace the hook and loop fasteners of Jones with adhesive? That is, if they are simply interchangeable, why change? Applicants submit that the reason is impermissibly gleaned only from the present application, i.e., to permit the flap to be fastened anywhere on the middle portion of the pocket.

Accordingly, amended claim 19 is further submitted to be nonobvious and patentable over Jones in combination with Joseph et al., Larose et al. and Tundermann.

For all of the above reasons, claim 19 as now presented is submitted to be patentable over the references of record.

Claims 2-13, 15, and 17-18 depend directly or indirectly from amended claim 19 and are submitted to be patentable over the references of record for the same reasons as claim 19.

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PATENTClaim 21

Amended claim 21 is directed to a package comprising:

a plural number of individually wrapped absorbent feminine care articles; and

reclosable packaging comprising:

a middle portion and a back portion together forming a flexible pocket having a hollow interior receiving said plural number of absorbent feminine care articles, the hollow interior of the pocket having a volume which is substantially filled by the plural number of individually wrapped feminine care articles so that the pocket conforms to the articles;

an opening extending into the hollow interior of the pocket, said opening being sized and shaped for permitting at least one of said plural number of individually wrapped feminine care articles to be withdrawn from said hollow interior of the pocket;

a flap attached to the pocket and adapted for covering the opening to retain said plural number of individually wrapped feminine care articles in the hollow interior of the pocket, said flap being selectably moveable between an open position in which the opening is generally unobstructed by said flap to permit said article to be withdrawn through the opening and a closed position in which the flap covers the opening and at least a portion of an exterior area of the middle portion of the pocket to retain said plural number of articles in the pocket and to prevent said plural number of articles from passing through the opening, the flap being everywhere free from flush alignment with the pocket in the closed position of said flap; and

a reclosable adhesive closure comprising an adhesive material positioned on said flap for releasably securing the

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flap in its closed position on said exterior area of the middle portion of the pocket, the adhesive closure being spaced from a distal edge of the flap to permit a portion of the flap to be grasped and separated from the pocket without releasing the closure, said flap being releasably securable by said adhesive closure substantially anywhere on said exterior area of said middle portion of the pocket.

Amended claim 21 is submitted to be nonobvious and patentable over the references of record, and in particular 1) Joseph et al. in view of McLaughlin et al. and Larose et al., and 2) Jones in view of Joseph et al., Larose et al., and Tundermann, for substantially the same reasons as claim 19. That is, whether considered alone or in combination the references fail to show or suggest a package having a flap and a flexible pocket arranged and configured such that an adhesive closure is provided on the flap and the flap is releasably securable anywhere on the exterior area of the middle portion of the package.

Claim 23

Amended claim 23 is directed to a package comprising:
a plural number of individually wrapped absorbent feminine care articles; and
reclosable packaging comprising:
a flexible pocket comprising at least in part a first wall and having a hollow interior receiving said plural number of absorbent feminine care articles, the hollow interior of the pocket having a volume which is substantially filled by the plural number of individually wrapped feminine care articles so that the pocket conforms to the articles;

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an opening extending into the hollow interior of the pocket, said opening being sized and shaped for permitting at least one of said plural number of individually wrapped feminine care articles to be withdrawn from said hollow interior of the pocket;

a flap attached to the pocket and adapted for covering the opening to retain said plural number of individually wrapped feminine care articles in the hollow interior of the pocket, said flap being selectably moveable between an open position in which the opening is generally unobstructed by said flap to permit said article to be withdrawn through the opening and a closed position in which the flap covers the opening and a first portion of the first wall of the pocket to retain said plural number of articles in the pocket and to prevent said plural number of articles from passing through the opening, a second portion of the first wall being uncovered by the flap in the closed position of the flap, the flap being free from flush alignment with said uncovered second portion of the first wall in the closed position of said flap; and

a reclosable adhesive closure comprising an adhesive material positioned on said flap for releasably securing the flap in its closed position anywhere on said exterior area of the pocket, the adhesive closure being spaced from a distal edge of the flap to permit a portion of the flap to be grasped and separated from the pocket without releasing the closure.

Amended claim 23 is submitted to be patentable over the references of record, and in particular, Jones in view of Joseph et al., Larose et al. and Tundermann, for substantially the same reasons as claim 19. That is whether considered alone or in combination the references fail to show or suggest a package having a reclosable adhesive closure comprising an

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adhesive material positioned on the flap for releasably securing the flap in its closed position anywhere on the exterior area of the pocket.

For these reasons amended claim 23 is submitted to be nonobvious and patentable over the references of record.

Claim 25

New claim 25 is directed to a package comprising:

a plural number of individually wrapped absorbent feminine care articles; and

reclosable packaging comprising:

a rectangular sheet having opposing side edges and opposite end edges;

a first fold extending between the side edges of the sheet to define a bottom of the packaging, the first fold separating a middle portion of the packaging from a back portion of the packaging, the middle and back portions of the packaging being sealingly joined along overlapping side edges to define a flexible pocket;

the pocket having a hollow interior for receiving said plural number of absorbent feminine care articles, the hollow interior of the pocket having a volume which is substantially filled by the plural number of individually wrapped feminine care articles so that the pocket conforms to the articles;

an opening extending into the hollow interior of the pocket, said opening being sized and shaped for permitting at least one of said plural number of individually wrapped feminine care articles to be withdrawn from said hollow interior of the pocket;

a second fold extending between the side edges of the sheet generally parallel to and above the first fold to define

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a top of the packaging, the second fold separating the middle portion of the packaging from a front portion of the packaging, the front portion of the packaging defining a flap;

the flap being adapted for covering the opening to retain said plural number of individually wrapped feminine care articles in the hollow interior of the pocket, said flap being selectably moveable between an open position in which the opening is generally unobstructed by said flap to permit said article to be withdrawn through the opening and a closed position in which the flap covers the opening and a first portion of the first wall of the pocket to retain said plural number of articles in the pocket and to prevent said plural number of articles from passing through the opening, a second portion of the first wall being uncovered by the flap in the closed position of the flap, the flap being free from flush alignment with said uncovered second portion of the first wall in the closed position of said flap; and

a reclosable adhesive closure comprising an adhesive material positioned on said flap for releasably securing the flap in its closed position on said exterior area of the middle portion of the pocket, the adhesive closure being spaced from a distal edge of the flap to permit a portion of the flap to be grasped and separated from the pocket without releasing the closure, said flap being releasably securable by said adhesive closure substantially anywhere on said exterior area of said middle portion of the pocket.

New claim 25 is submitted to be patentable over the references of record, and in particular, Jones, Joseph et al., Larose et al., McLaughlin et al., and Tundermann for reasons similar to those discussed above in connection with claim 19. That is, whether considered alone or in combination the

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references fail to show or suggest a reclosable adhesive closure comprising an adhesive material positioned on the flap for releasably securing the flap in its closed position anywhere on the exterior area of the middle portion of the pocket.

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PATENTCONCLUSION

In view of the foregoing, favorable consideration of claims 2-13, 15, 17-19, 21, 23, and 25 as now presented is respectively requested. The Commissioner is hereby authorized to charge any fee deficiency in connection with this Amendment D to Deposit Account Number 19-1345 in the name of Senniger Powers.

Respectfully submitted,



Richard L. Bridge, Reg. No. 40,529
SENNIGER POWERS
One Metropolitan Square, 16th Floor
St. Louis, Missouri 63102
(314) 231-5400

RLB/PEB/tmg

VIA FACSIMILE (703) 872-9306